

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

FITZGERALD RUSSAW,)
Petitioner,)
v.) CIVIL ACT. NO. 1:17-cv-76-ECM
KARLA JONES, *et al.*,) (WO)
Respondents.)

OPINION and ORDER

On April 26, 2019, the Petitioner filed a *pro se* Notice of Appeal (doc. 20) and Motion for Leave to Appeal *in forma pauperis* (doc. 21) which the court construes as containing a motion for a certificate of appealability.

28 U.S.C. § 1915(a) provides that “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” In making this determination as to good faith, the court must use an objective standard, such as whether the appeal is “frivolous,” *Coppedge v. United States*, 369 U.S. 438, 445 (1962), or “has no substantive merit.” *United States v. Bottoson*, 644 F.2d 1174, 1176 (5th Cir. Unit B 1981). Applying this standard, the court is of the opinion that, for the reasons stated in the Recommendation (doc. 16) and the Memorandum Opinion adopting the Recommendation (doc 18), the Petitioner’s appeal is without

a legal or factual basis and, accordingly, is frivolous and not taken in good faith. *See e.g. Rudolph v. Allen, supra.*

In addition, pursuant to 28 U.S.C. § 2253(c), Russaw must obtain a Certificate of Appealability (COA) prior to taking an appeal. “In order to obtain a COA, a petitioner must make ‘a substantial showing of a denial of a constitutional right.’ 28 U.S.C. § 2253(c)(2).” *Borgwald v. Sec., Fla. Dep’t of Corrs.*, 2018 WL 7108247, *2 (11th Cir. 2018) (quoting *Slack v. McDaniel*, 529 U.S. 473, 478-85 (2000)).

The petitioner has failed to make the requisite showing.

Accordingly, for the reasons as stated, the appeal in this cause be and is hereby certified, pursuant to 28 U.S.C. § 1915(a), as not taken in good faith, and the motion for leave to appeal *in forma pauperis* and motion for a certificate of appealability (doc. 21) be and are hereby DENIED.

DONE this 13th day of May, 2019.

/s/ Emily C. Marks

EMILY C. MARKS
CHIEF UNITED STATES DISTRICT JUDGE